IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTY FIRST DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NOs : 21040 & 21041 of 2004

(1) **W.P.No.21040 of 2004.**

Between:

The A.P. Mahesh Co-op. Urban Bank Ltd., Rep by its Managing Director Santosh Kumar Rathi S/o Radhakishan Rathi, 5-3-989, Sherza Estate, III Floor, N.S. Road, Hyderabad.

.... PETITIONER

AND

1. The Additional Secretary and the Appellate Authority, Department of Agriculture and Co-operation, Govt. of India, Krishi Bhawan, New Delhi.
2. Shivraj Bhutada, S/o. Bansilal Bhutada, R/o. Flat No. 109, Sowmya Apartments, Redhills, Hyderabad.
3. The Election Officer, District Co-operation Society, Pottisriramulu Nagar, Masab Tank, Hyderabad.

..RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ, order or direction specially one in the nature of Writ of Mandamus declaring the order Dt. 02-11-2004 passed in file No. 11014/39/2003 L & M impleading parties as illegal and set aside the said order.

Counsel for the Petitioner: Mr.Murlinarayan Bung.

Counsel for Respondent No.1: MR.ARAJASHEKAR REDDY, Standing Counsel for Central Government;

Counsel for Respondent No.2: Mr. Nanda Kishore Rathi

Counsel for Respondent No.3: G.P. for Co-operation.

(2): **WRIT PETITION NO : 21041 of 2004**

Between:

1. Shri B.N.Rathi, S/o Goverdhandas, Chairman 4-5-178, Sultan Bazar, Hyderabad,
2. Dr.R.M.Saboo, S/o Misrilal Saboo, Sr.Vice Chairman, 3-5-144/3, Eden Garden 73, Ramkote, King Kothi, Hyderabad,
3. Shri Ramesh Kumar Bung, S/o Ramprasad Bung, Vice Chairman, 3-5-121/E/1/2, 1st Floor, Eden Bagh, Ramkote, Hyderabad,
4. Smt.Bhagawati Baldewa, W/o Mahesh Baldewa, Director, 42, Kartikeya Enterprises, Raghavaratna Towers, Chirag Ali Lane, Hyderabad,
5. Shri Narayanlal Baheti, S/o Loon Karan Baheti, Director, 15-9-59, Maharaj Gunj, Hyderabad,
6. Shri Ramprakash Bhandari, S/o Kundanlal Bandari, 14-7-60, Shankar Bazar, Begum Bazar, Hyderabad,
7. Shri Rajkumar Malpani, S/o Jagadish Malpani, 73, Gafar Khan Colony, Road No.10, Banjara Hills, Hyderabad,
8. Shri Purushottamdas Mandana, S/o Govindalal Mandana, 7-1-59/2, Ameerpet, Hyderabad
9. Shri Ramdayal Rathi, S/o Rawatmal, Director, 395/1, Old Kabutar Khana, Hyderabad;
10. Shri Laxminarayan Rathi, S/o Balakishan Rathi, Director, 14-7-56/A, Shankar Bazar, Begum Bazar, Hyderabad

....PETITIONER

And

1. The Additional Secretary and Appellate Authority under Multi State Co-operative Societies Act, 1984,Ministry of Agriculture, Department of Agriculture and Co-operation, Krishi Bhavan, New Delhi
2. Shivaraj Bhutada, S/o late Bansilal Bhutada, R/o Flat No.109, Soumya Apartments, Red Hills, Hyderabad
3. A.P.Mahesh Co-operative Urban Bank Ltd., Office at 5-3-989, Nizam Shahi Road, III Floor, Sherza Estate, Hyderabad

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or direction more particularly one in the nature of Mandamus calling

for records on the file of the 1st respondent in Appeal No.L-11014/39/2003-L & M and set aside the order dated 02-11-2004

Counsel for the Petitioner:MR.C.V.MOHAN REDDY

Counsel for the Respondent No-1: MR.ARAJASHEKAR REDDY, Standing Counsel for Central Government.

Counsel for the Respondent No.2: Mr. Nanda Kishore Rathi

Counsel for the Respondent No.3: MR.MURALI NARAYAN BUNG

The Court made the following :

–

–

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

–

–

W.P.Nos.21040 and 21041 of 2004

–

COMMON ORAL ORDER:

The A.P. Mahesh Co-operative Urban Bank Limited is the petitioner in W.P.No.21040 of 2004 and ten of the elected Directors of the bank are the petitioners in W.P.No.21041 of 2004. The common grievance in these writ petitions is as regards the Order dated 2.11.2004 of the 1st respondent Appellate Authority in Appeal No.11014/39/2003 L & M.

The 3rd respondent is the A.P.Mahesh Co-operative Urban Bank Limited (the Bank) registered under Multi State Co-operative Societies Act, 1984 (for short 'the 1984 Act') with its head office at Hyderabad. Elections to the Managing Committee of the Bank were held in 2002 under the supervision of the District Co-operative Officer, Hyderabad who was appointed as the Election Officer to conduct the elections, by the Registrar and Commissioner of Co-operative Societies, Government of Andhra Pradesh, vide proceedings dated 20.5.2002. Election was held to elect fifteen Directors to the bank.

The election was held on 7.7.2002 and ten of the elected Directors are the petitioners in W.P.No.21041 of 2004. The 2nd respondent was one of the unsuccessful contestants at the elections. He filed W.P.No.11896 of 2002 alleging irregularities in the election process and that the election notification

was not issued in accordance with the provisions of the 1984 Act. By the Judgment dated 5.7.2004, the writ petition was dismissed on the ground that as the election process had commenced and as the election was held to a Multi-State Co-operative Society and interdiction of such an election process ought not to be done. Aggrieved, the 2nd respondent preferred Writ Appeal No.1333 of 2002 and during the pendency of the appeal, he filed an election petition before the Commissioner for Co-operation and Registrar of Co-operative Societies, who was delegated the powers of arbitration under Section 94 of 1984 Act by the Central Registrar, appointed under Section 4 of the 1984 Act. Writ Appeal No.1333 of 2002 was dismissed on 31.10.2002 in view of the fact that the 2nd respondent had pursued the remedy of an election petition.

The election petition filed by the 3rd respondent under Section 74 of the 1984 Act, bearing Rc.No.29382/2002-L1 was dismissed by order dated 3.4.2003 on the ground that the 2nd respondent failed to implead the elected Directors as respondents to the election petition and since they were necessary and proper parties to the election petition, their non-impleadment constituted non-joinder of necessary parties and therefore, was fatal to the maintainability of the election petition.

Aggrieved thereby, the 2nd respondent preferred an appeal to the 1st respondent under Section 90 of the 1984 Act. On 16.8.2004, the 1st respondent made file noting to the effect that in the interests of natural justice, the elected members of the Board of the Bank should be given an opportunity to appear before the 1st respondent and directed the Bank to serve notice as regards the appeal on the elected Directors. On 3.9.2004, the first respondent while adjourning the appeal directed the Bank to ensure service of the notice of fixing the date of hearing on 29.9.2004 to the elected members of the Board of Directors of the bank. As against the said order, the Bank appears to have filed a review. The elected Board of Directors also appear to have submitted objections in the review application, contending that the appellate authority could not direct the impleadment of the elected Board of Directors, but could only have remanded the matter to the appellate authority.

The 1st respondent by the order dated 2.11.2004 rejected the objections

of the Bank and the elected Board of Directors and concluded that the appeal was maintainable. Responding to the contention that if at all the 1st respondent should remand the matter to the primary authority, the 1st respondent held that as this Court had in another writ petition (filed by the 2nd respondent) directed expeditious disposal of the appeal and as the remand of the case to the primary authority may protract the adjudication, it had decided to implead the elected Board of Directors, in the appeal and rejected the review application filed by the Bank and directed the elected Board of Directors to file their written submissions.

In substance, aggrieved by the above order of the 1st respondent, the Bank and elected Board of Directors are before this Court.

Admittedly, the 2nd respondent filed the election petition before the Central Registrar under Section 74 of the 1984 Act in respect of a dispute in connection with the election to the Board of Directors of the 3rd respondent bank, after the process of election was concluded and the petitioners (in W.P.No.21041 of 2004) and some others assumed office as Directors of the Bank. In the circumstances, whatever the grounds on which the election petition was filed, the relief if granted to the 2nd respondent, would have involved removal from office of the elected Board of Directors of the Bank, clearly and indisputably the elected Board of Directors would have been visited with adverse civil consequences. They were thus adversely affected parties, the 2nd respondent therefore ought to have impleaded them as respondents to the election petition. Thus, the 2nd respondent failed to do. The primary authority, the Commissioner and Registrar of Co-operative Societies of Andhra Pradesh acting as a Central Registrar and exercising powers under Section 74 of the 1984 Act, therefore, rightly came to the conclusion that the election petition filed by the 2nd respondent was not maintainable as the elected Directors were not impleaded. The 2nd respondent instead of impleading the Directors and filing a fresh election petition, if permissible under law, choose to prefer an appeal to the 1st respondent under Section 90 of the 1984 Act.

The 1st respondent, in the facts and circumstances of the case referred to above could only have decided, whether the election petition preferred by the

2nd respondent without impleading the elected Directors of the Bank, was maintainable. That was only question that arose in the appeal. Instead of adjudicating upon such a singular issue as presented to it, the 1st respondent went about impleading the elected Board of Directors in the appeal as though he has the jurisdiction to *sui geners* decide the election petition as a primary Tribunal. In the absence of any pronouncement on the merits of the election petition by the primary authority, the validity of the election on substantive grounds was not the subject matter of the appellate; scrutiny in the appeal preferred by the 2nd respondent. In any event as the elected Directors were not impleaded in the Election Petition by the 2nd respondent, there was no legal warrant for the 1st respondent to have directed impleading of the elected Directors, in the appeal.

On the analysis above, the Order of the 1st respondent dated 2.11.2004 in File No.L-11014/39/2003-L&M beseeches invalidation and is accordingly quashed. The Writ Petitions are allowed. The 1st respondent may now proceed to dispose of the main appeal in accordance with law.

31st January 2005.

BCS

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Monday, the thirty first day of January, two thousand and five.

REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Additional Secretary and the Appellate Authority, Department of Agriculture and Cooperation, Govt. of India, Krishi Bhawan, New Delhi.
2. The Election Officer, District Co-operation Society, Pottisriramulu Nagar, Masab Tank, Hyderabad.
3. The Additional Secretary and Appellate Authority under Multi State Cooperative Societies Act, 1984, Ministry of Agriculture, Department of Agriculture and Co-operation, Krishi Bhavan, New Delhi-110011.
4. A.P. Mahesh Cooperative Urban Bank Ltd., Office at 5-3-989, Nizam Shahi Road, III-Floor, Sherza Estate, Hyderabad.
5. 2.C.Cs to G.P.for Co-operation;High Court of A.P. Hyderabad (OUT)
6. 2.2CD copies